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OCT 24 2011

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF HUMBOLDT

10 ARCATA COMMUNITY RECYCLING
11 CENTER, INC.,

12 Plaintiff,

13 vs.

14
15 HUMBOLDT WASTE MANAGEMENT
16 AUTHORITY and DOES 1 through 10,
17 inclusive,

18 Defendants.

Case No.: DR110811

**COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF**

19 Arcata Community Recycling Center, Inc. alleges as follows:

20 **INTRODUCTORY ALLEGATIONS**

21 1. Plaintiff Arcata Community Recycling Center, Inc. is, and at all times mentioned in
22 this Complaint was, a non-profit corporation organized under the laws of the State of California,
23 having its principle place of business in the County of Humboldt, State of California.

24 2. Defendant Humboldt Waste Management Authority is, and at all times mentioned in
25 this Complaint was, a joint powers authority organized under Government Code section 6500 et
26 seq., the members of which are: City of Arcata, City of Blue Lake, City of Eureka, City of
27 Ferndale, City of Rio Dell and the County of Humboldt. Defendant Humboldt Waste
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1 Management Authority is a public entity organized and existing under the laws of the State of
2 California.

3 3. Plaintiff does not know the true names and capacities of the defendants sued herein as
4 DOES 1 through 10, inclusive. Plaintiff will seek leave of court to amend this Complaint to
5 allege said defendants' true names and capacities as soon as plaintiff ascertains them.

6 4. Plaintiff is informed and believes and on that basis alleges that at all times mentioned
7 in this Complaint, each defendant was the member, agent and employee of their co-defendants,
8 and in doing the things alleged in this Complaint were acting within the course and scope of that
9 membership, agency and employment. The actions of defendants, as described in this
10 Complaint, occurred with the County of Humboldt, State of California, and constitute "state
11 action" as that term has been defined by relevant case law.

12 5. Plaintiff was founded in 1970, and is the oldest continuously operating non-profit
13 recycling center in the country. Over time, plaintiff grew from a small neighborhood operation
14 into a comprehensive regional recycling enterprise. Eventually, plaintiff's processing of
15 recyclable materials grew beyond the capacity of plaintiff's facilities. In consultation with
16 defendants and community leaders, plaintiff identified the need for a regional recycling facility.
17 In 2005, with support from defendants and the community, plaintiff obtained financing to
18 construct such a regional recycling facility. The facility was constructed in Samoa, California, in
19 2006, and has been processing the majority of recyclable materials generated in Humboldt
20 County. Much of the material processed at the Samoa facility came from defendant Humboldt
21 Waste Management Authority and its member communities. Plaintiff and defendants worked
22 closely together to maintain and improve recycling in the region and developed a relationship of
23 interdependence.

24 6. The relationship between plaintiff and defendants was mutually beneficial for an
25 extended period of time until 2008, when the market for recyclable materials began to decline.
26 Plaintiffs operations began to become uneconomical, and plaintiff was forced to charge
27 defendants fees for processing. As a consequence, plaintiff and defendants began to explore
28 alternatives for the processing of recyclable materials.

1 7. On June 26, 2009, defendant Humboldt Waste Management Authority approached
2 plaintiff seeking a long term contract pursuant to which plaintiff would process recyclable
3 materials for defendant Humboldt Waste Management Authority and its members. At that time,
4 defendant Humboldt Waste Management Authority asked plaintiff if plaintiff would allow
5 defendant Humboldt Waste Management Authority to commission a study of plaintiff's Samoa
6 processing facility in order to negotiate terms of a contract that would be fair and reasonable to
7 both parties. Based on the representations that a study of plaintiff's Samoa facility would be
8 used to arrive at terms of a long term contract, plaintiff consented to such a study. Thereafter,
9 the board of defendant Humboldt Waste Management Authority approved a work plan for the
10 study.

11 8. Defendant Humboldt Waste Management Authority retained the consulting firm of
12 Intelliwaste, Inc. to conduct a comprehensive study of plaintiff's Samoa processing facility, and
13 at defendants' request and in anticipation of a long term contract with defendants, plaintiff
14 granted said consulting firm access to its operations, books and other confidential information.
15 In or around February, 2010, defendant Humboldt Waste Management Authority sent plaintiff an
16 advance copy of Intelliwaste's draft report and called for a meeting with plaintiff to discuss the
17 progress of the study. The draft report contained a section analyzing acquisition of the Samoa
18 facility by defendant Humboldt Waste Management Authority. That section noted that the
19 analysis of acquisition was a part of the study commission unilaterally by defendant Humboldt
20 Waste Management Authority. Plaintiff objected to the inclusion of the acquisition analysis
21 based on the parties' agreement that the study was for the purpose of negotiating a long term
22 contract, not a sale of property. At that meeting, the Executive Director of defendant Humboldt
23 Waste Management Authority confirmed that its true intent in commissioning the study was to
24 acquire title to plaintiff's Samoa processing facility. At that meeting, plaintiff informed
25 defendants that it was not then interested in selling its assets, but understood that the Intelliwaste
26 study was for the purpose of negotiating a contract under which plaintiff would continue to own
27 and operate the Samoa facility. At numerous subsequent public meetings, representatives of
28 defendant Humboldt Waste Management Authority reiterated and disclosed that agency's desire

1 and intent to acquire plaintiff's Samoa facility. Before the Intelliwaste study was released, in or
2 around January, 2010, defendant Humboldt Waste Management Authority's Executive Director
3 and representatives of its members met with the firm Solid Waste of Willits to discuss shipping
4 Humboldt County recyclables south to Willits for processing.

5 9. On March 11, 2010, defendant Humboldt Waste Management Authority released the
6 Intelliwaste study to the public. Plaintiff was surprised to find the study was released in the same
7 basic format of the draft that had been previously reviewed and objected to by plaintiff. The study
8 stated that plaintiff was not interested in selling the facility at the time of the study. Defendant
9 Humboldt Waste Management Authority staff submitted the Intelliwaste study to its board with a
10 recommendation that acquisition of the facility be pursued. The board rejected staff's
11 recommendation.

12 10. Shortly thereafter, defendant Humboldt Waste Management Authority's board resolved to
13 abandon any efforts to negotiate a contract with plaintiff, as was represented to plaintiff to induce it to
14 allow the Intelliwaste study in the first place. Concurrently, defendant Humboldt Waste Management
15 Authority board resolved to abandon any effort to seek acquisition of the Samoa facility through
16 discussions with plaintiff, the facility owner. At about the same time, defendant Humboldt Waste
17 Management Authority resolved to release a request for proposals for the processing of only the
18 recyclable material that were being processed at plaintiff's facility, exempting the recyclable materials
19 being processed by plaintiff's competitors within the member jurisdictions. The Intelliwaste study,
20 that had previously been released to the public, disclosed all of plaintiff's operational costs, revenues,
21 operating procedures and other proprietary information in a public document. The release of this
22 information deprived plaintiff of any fair opportunity to compete in bidding in response to the request
23 for proposals to process the material the Samoa facility depended upon for its operations, as all of its
24 competitors had full access to every detail of plaintiff's operations and finances.

25 11. In or around July, 2010, in response to the damage plaintiff suffered from the release of
26 the Intelliwaste study and the decision of defendants to put the processing of recyclables out to
27 competitive bidding, realizing that defendants had lured plaintiff into an untenable position using false
28 representations and bad faith, plaintiff offered to sell the Samoa facility to defendant Humboldt Waste

1 Management Authority. Defendant Humboldt Waste Management Authority then authorized an
2 appraisal of plaintiff's Samoa facility aimed at possible acquisition. Based on defendants'
3 representations that the appraisal was a good faith attempt to acquire the Samoa facility, plaintiff
4 agreed to give defendants access to its property for appraisal. On or around August, 2010, defendant
5 Humboldt Waste Management Authority issued a targeted request for proposals that included only the
6 recyclables that were then being processed at the Samoa facility, excluding all other recyclables being
7 processed elsewhere in Humboldt County.

8 12. Plaintiff expressed its concerns to defendants that the damage to plaintiff from the
9 combination of acts by defendants in obtaining authorization for the Intelliwaste study on the false
10 representation that a contract was contemplated, releasing of the Intelliwaste study, commencing the
11 acquisition appraisal and releasing the request for proposals would devastate plaintiff's business,
12 indicating that defendants had by their actions and false representations lured plaintiff into a position
13 in which it could not bid competitively on the RFP, and absent a contract with defendants would be
14 forced to close its business and default on its financing. Plaintiff is informed and believes, and on that
15 basis alleges that through this course of conduct, defendants ultimately sought to take the Samoa
16 facility from plaintiff, and through its manipulations, would be able to acquire it at a much discounted
17 price after plaintiff was thereby forced to cease operations and default on its financing. Defendants
18 ignored plaintiff's concerns.

19 13. Still hoping to salvage its business, plaintiff submitted a bid in response to the request for
20 proposals. Plaintiff's bid was submitted on October 11, 2010, the date set for the submission of
21 proposals in the request. Plaintiff's competitor, Solid Waste of Willits, submitted its proposal the
22 following day, one day after the deadline stated in the request for proposals. Plaintiff is informed and
23 believes, and on that basis alleges that defendants engaged in secret communications with Solid Waste
24 of Willits which resulted in defendants agreeing to accept their proposal after the stated deadline.
25 Defendants responded to plaintiff's objections to the acceptance of a late proposal indicating that it
26 was in the public's best interest that it should accept all competing bids regardless of any deadlines.
27 Plaintiff's objections were ignored by defendants, and defendant Humboldt Waste Management
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1 Authority resolved to negotiate exclusively with Solid Waste of Willits for the processing of
2 recyclables then being processed by plaintiff at its Samoa processing facility.

3 14. Defendants awarded a contract to Solid Waste of Willits to haul much of the material
4 formerly processed by plaintiff south to Willits for processing. As a consequence of this course of
5 conduct by defendants, plaintiff has been wrongfully deprived of the materials its business depends
6 upon for conducting its operations. As a consequence of defendants' actions, plaintiff anticipates that
7 it will now be forced to terminate its operations by the end of this year. When that occurs, plaintiff
8 will be forced to default on its financing, dissolve itself likely in bankruptcy and terminate all of its
9 Humboldt County employees. Since plaintiff's assets are pledged as security for the financing
10 obtained to construct the Samoa facility, the lender will be forced to foreclose and sell plaintiff's assets
11 at a foreclosure sale. The end result will be that defendants will be able to acquire a modern state of
12 the art recycling facility, fulfilling its true intent from the time when defendants approached plaintiff to
13 negotiate a long term contract, and for a price well below its fair market value.

14 15. On October 13, 2011, defendant Humboldt Waste Management Authority issued a staff
15 report to its board recommending modification of its Joint Powers Agreement. Ironically, the
16 substance of the proposed amendments is to give defendant Humboldt Waste Management Authority
17 the authority to expand its jurisdiction from only solid waste to now include recyclable materials.
18 Plaintiff is informed and believes, and on that basis alleges that defendant Humboldt Waste
19 Management Authority presently lacks the authority to control the processing of recyclable materials,
20 and in subjecting plaintiff to the course of wrongful conduct that will likely destroy plaintiff's
21 business, it was operating beyond its authority. The same staff report defines Recycling Facility in
22 such a way as to identify specific facilities that can receive recyclable materials, excluding plaintiff's
23 Samoa facility, and facilities owned by defendant Humboldt Waste Management Authority. If these
24 amendments are adopted, plaintiff's Samoa facility will be un-useable by any party unless the facility
25 is acquired by defendant Humboldt Waste Management Authority. Defendant Humboldt Waste
26 Management Authority will have utilized its governmental powers to substantially devalue plaintiff's
27 private property in its efforts to ultimately acquire it.
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1 Complaint when the amount has been ascertained. To date, plaintiff has received no compensation
2 from defendants for the damage and taking alleged in this Complaint. Plaintiff has incurred, and will
3 continue to incur, appraisal, attorney and other fees, costs and disbursements not yet known or
4 ascertained, in an amount that cannot be presently calculated and that are recoverable under Code of
5 Civil Procedure section 1036.

6 30. WHEREFORE, plaintiff prays for the relief set forth below.

7 **FOURTH CAUSE OF ACTION**

8 **Intentional Interference with Prospective Economic Advantage**

9 31. Plaintiff incorporates the allegations contained in paragraphs 1 through 30, inclusive, into
10 this cause of action as if set forth here.

11 32. Plaintiff has been for many years involved in valid and existing business relationships
12 with various people, enterprises and communities in Humboldt County in which plaintiff accepted and
13 processed recyclable materials. Those relationships have provided plaintiff with sufficient recyclable
14 materials to grow and operate a non-profit recycling enterprise that has reinvested in the local
15 communities in providing good paying jobs, investing in capital improvements and providing
16 education on the benefits of recycling. Defendants knew about these relationships.

17 33. Defendants intentionally disrupted these relationships by engaging in a course of conduct
18 described above in this Complaint. Plaintiff is informed and believes, and on that basis alleges that
19 defendant Humboldt Waste Management Authority actually contacted parties that plaintiff had valid
20 and existing contracts with seeking to transfer those contracts from plaintiff to defendant Humboldt
21 Waste Management Authority. As a result of defendants' intentional acts, the relationships between
22 plaintiff and various people, enterprises and communities in Humboldt County and elsewhere were
23 disrupted by defendants using their governmental powers to deprive plaintiff of sufficient recyclable
24 material to continue its operations.

25 34. Defendants' interference with these relationships resulted in damage to plaintiff in an
26 amount that is presently unknown.

1 35. Defendants' conduct in abusing governmental powers to deprive plaintiff of its
2 prospective economic advantage was intentional and so despicable as to justify an award of punitive
3 damages.

4 36. WHEREFORE, plaintiff prays for the relief set forth below.

5 **FIFTH CAUSE OF ACTION**

6 **Negligent Interference with Prospective Economic Advantage**

7 37. Plaintiff incorporates the allegations contained in paragraphs 1 through 36, inclusive, into
8 this cause of action as if set forth here.

9 38. Plaintiff has been for many years involved in valid and existing business relationships
10 with various people, enterprises and communities in Humboldt County in which plaintiff accepted and
11 processed recyclable materials. Those relationships have provided plaintiff with sufficient recyclable
12 materials to grow and operate a non-profit recycling enterprise that has reinvested in the local
13 communities in providing good paying jobs, investing in capital improvements and providing
14 education on the benefits of recycling. Defendants knew about these relationships.

15 39. Defendants, as public entities organized and existing under the laws of the State of
16 California owed a duty to plaintiff to exercise reasonable care in the carrying out their responsibilities.

17 40. Defendants breached the duty to exercise reasonable care and disrupted these
18 relationships by engaging in a course of conduct described above in this Complaint. Plaintiff is
19 informed and believes, and on that basis alleges that defendant Humboldt Waste Management
20 Authority actually contacted parties that plaintiff had valid and existing contracts with seeking to
21 transfer those contracts from plaintiff to defendant Humboldt Waste Management Authority. As a
22 result of defendants' intentional acts, the relationships between plaintiff and various people,
23 enterprises and communities in Humboldt County was disrupted by defendants using their
24 governmental powers to deprive plaintiff of sufficient recyclable material to continue its operations.

25 41. Defendants' negligent interference with these relationships resulted in damage to plaintiff
26 in an amount that is presently unknown.

27 42. WHEREFORE, plaintiff prays for the relief set forth below.
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1 **SIXTH CAUSE OF ACTION**

2 **Intentional Misrepresentation**

3 43. Plaintiff incorporates the allegations contained in paragraphs 1 through 42, inclusive, into
4 this cause of action as if set forth here.

5 44. Defendants represented to plaintiff that defendants wished to enter into a long term
6 contract with plaintiff pursuant to which plaintiff would process recyclable materials generated by
7 defendants and their member communities. When defendants made this representation to plaintiff,
8 defendants knew this representation was false, and made this representation with intent to induce
9 plaintiff to give defendants access to its business operations, records, financing and other proprietary
10 information. Plaintiff is informed and believes, and on that basis alleges that defendants' true intent
11 was to obtain information defendants could use to leverage acquisition of plaintiff's property.

12 45. At the time this representation was made, plaintiff was unaware that it was a false
13 representation, and believing defendants to be acting in good faith, relied on the representation and
14 agreed to allow a study of plaintiff's operations by a consulting firm named Intelliwaste, Inc. Had
15 plaintiff known the true intent of defendants in making this representation, plaintiff would not have
16 consented to such a study that would publicly disclose all of its proprietary business information.

17 46. As a result of this intentional misrepresentation, plaintiff has been damaged in a sum that
18 is currently unascertained, but to the extent that the ultimate consequence will be the loss of all
19 plaintiff's assets and dissolution likely in bankruptcy.

20 47. The conduct of these governmental defendants in making this intentional
21 misrepresentation was so despicable as to justify an award of punitive damages.

22 48. WHEREFORE, plaintiff prays for the relief set forth below.

23 **SEVENTH CAUSE OF ACTION**

24 **Negligent Misrepresentation**

25 49. Plaintiff incorporates the allegations contained in paragraphs 1 through 48, inclusive, into
26 this cause of action as if set forth here.

27 50. Defendants represented to plaintiff that defendants wished to enter into a long term
28 contract with plaintiff pursuant to which plaintiff would process recyclable materials generated by

1 defendants and their member communities. When defendants made this representation to plaintiff,
2 defendants had no reasonable ground for believing that this representation was true, and made this
3 representation with intent to induce plaintiff to give defendants access to its business operations,
4 records, financing and other proprietary information. Plaintiff is informed and believes, and on that
5 basis alleges that defendants' true intent was to obtain information defendants could use to leverage
6 acquisition of plaintiff's property. Defendants owed a duty to plaintiff to exercise reasonable care and
7 good faith in its dealings with plaintiff, and breached that duty in making this representation.

8 51. At the time this representation was made, plaintiff was unaware that it was a false
9 representation, and believing defendants to be acting in good faith, relied on the representation and
10 agreed to allow a study of plaintiff's operations by a consulting firm named Intelliwaste, Inc. Had
11 plaintiff known the true intent of defendants in making this representation, plaintiff would not have
12 consented to such a study that would publicly disclose all of its proprietary business information.

13 52. As a result of this intentional misrepresentation, plaintiff has been damaged in a sum that
14 is currently unascertained, but to the extent that the ultimate consequence will be the loss of all
15 plaintiff's assets and dissolution likely in bankruptcy.

16 53. WHEREFORE, plaintiff prays for the relief set forth below.

17 **EIGHTH CAUSE OF ACTION**

18 **Misappropriation of Trade Secrets**

19 54. Plaintiff incorporates the allegations contained in paragraphs 1 through 53, inclusive, into
20 this cause of action as if set forth here.

21 55. Plaintiff has established its technical and production leadership in the recycling industry in
22 part due to its efforts to develop proprietary processing techniques. Plaintiff developed these
23 proprietary techniques at great expense and over a long period of time. Availability of these
24 proprietary techniques to a competitor would provide that competitor a distinct competitive advantage
25 and would be a significant loss to plaintiff. These techniques are not generally known to the public or
26 the recycling industry and have been the subject of reasonable efforts to keep them confidential.

27 56. Plaintiff is informed and believes, and on that basis alleges that defendants
28 misappropriated all or portions of these proprietary techniques by obtaining consent to study plaintiff's

1 operations using false representations as described above in this complaint. Defendants released the
2 misappropriated information to the public and to all of plaintiff's competitors. These acts by
3 defendants as alleged constitute misappropriation of trade secrets as defined in Civil Code section
4 3426.1(b).

5 57. As a proximate result of this misappropriation, plaintiff has been harmed in an amount
6 currently unascertainable, but that will likely result in the termination of plaintiff's business.

7 58. Plaintiff is informed and believes, and on that basis alleges that defendants committed
8 their acts of misappropriation willfully and maliciously in that they used fraud to obtain the
9 information, and such conduct justifies an award of punitive damages under Civil Code section
10 3426.3(c), and attorney fees under Civil Code section 3426.4.

11 59. WHEREFORE, plaintiff prays for the relief set forth below.

12 **NINTH CAUSE OF ACTION**

13 **Improper Award of Public Contract; Declaratory Relief**

14 60. Plaintiff incorporates the allegations contained in paragraphs 1 through 59, inclusive, into
15 this cause of action as if set forth here.

16 61. Defendant Humboldt Waste Management Authority released a request for proposals for
17 processing of recyclable materials seeking competitive bids for public contracts. Plaintiff timely
18 submitted a proposal, "bid," in response to the request for proposals. Subsequent to the deadline for
19 the submittal of proposals, defendant Humboldt Waste Management Authority accepted a proposal
20 from Solid Waste of Willits, a competitor of plaintiff. Plaintiff promptly submitted a written protest to
21 defendant Humboldt Waste Management Authority objecting to the late acceptance of competing
22 proposals. Despite this protest, defendant Humboldt Waste Management Authority awarded a
23 contract to Solid Waste of Willits based on the request for proposals.

24 62. The award to Solid Waste of Willits is arbitrary, capricious and contrary to state law
25 regulating public contracts. Unless the improper award is rectified, plaintiff will suffer immediate and
26 irreparable damage as set forth above in this Complaint.

27 63. A present controversy exists between plaintiff and defendants regarding the legality of this
28 award of a public contract. Unless the court issues an appropriate declaration of the parties' rights,

1 they will not know whether the award was proper, and there will continue to be disputes and
2 controversy over defendants' contract award policies. Plaintiff seeks a declaration of this court
3 regarding the rights, duties and responsibilities regarding the award of this contract, as well and any
4 damages recoverable with costs and attorney fees.

5 **WHEREFORE**, plaintiff prays for judgment against defendants as follows:

6 1. On the first cause of action:

7 a. an award of damages, to the extent applicable, for violation of plaintiff's due process
8 and equal protection rights and under 42 USCA section 1983 fully compensating plaintiff for the
9 damages suffered as a direct and proximate result of defendants' wrongful conduct;

10 b. an award of costs, including attorney fees pursuant to Code of Civil Procedure section
11 1021.5 and 42 USCA section 1988.

12 2. On the second cause of action:

13 a. for a declaration that defendants' conduct constitutes a violation of plaintiff's equal
14 protection and due process rights.

15 3. On the third cause of action:

16 a. for damages in an amount according to proof, with interest at the legal rate from the
17 date of inception of said damages as determined by the court; and

18 b. for appraisal, attorney and other fees according to proof.

19 4. On the fourth cause of action:

20 a. for compensatory damages according to proof; and

21 b. an award of punitive damages.

22 5. On the fifth cause of action:

23 a. for compensatory damages according to proof.

24 6. On the sixth cause of action:

25 a. for compensatory damages according to proof; and

26 b. an award of punitive damages.

27 7. On the seventh cause of action:

28 a. for compensatory damages according to proof.

1 8. On the eighth cause of action:

2 a. for compensatory damages according to proof; and

3 b. an award of punitive damages.

4 9. On the ninth cause of action:

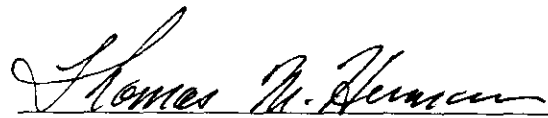
5 a. for allowable compensatory damages according to proof.

6 Plaintiff also prays:

7 a. for recovery of costs and attorney fees; and

8 b. for such other relief the court deems proper.

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10 DATED: 10-24-11



11 Thomas M. Herman, Attorney for Plaintiff
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